Louisiana Law Review

Volume 19 | Number 2
The Work of the Louisiana Supreme Court for the 1957-1958 Term
February 1959

Public Law: State and Local Taxation (Exclusive of Income Tax)

Charles A. Reynard

power over municipally owned utilities at the time of the Constitution of 1921; they cite later cases than those cited by the majority holding that unless the power of rate-fixing is expressly given to municipalities, they do not have that power.[4] Since the City of Monroe does not have clear rate-fixing power, dissenters conclude it cannot have been reserved to them under Article VI, Section 7, of the Constitution. They note also that the Constitution treats rate-fixing by the Louisiana Public Service Commission separate and apart from supervision and control and that reservation of the latter alone cannot reserve the rate-fixing power unless it has been specifically granted in charter or statute.[5]

Either literal interpretation of the Monroe charter, of course, has plausibility; hence, the issue might have been resolved more clearly on the basis of the policy decision seemingly made when a constitution was adopted providing for state-wide rate-fixing powers in the Louisiana Public Service Commission;[6] this step would seem to have been clearly a decision in favor of commission powers rather than municipal power generally and would seem a basis for resolving a close problem of statutory and constitutional interpretation such as is here involved in favor of, rather than against, commission rate-fixing authority.[7]

STATE AND LOCAL TAXATION

(EXCLUSIVE OF INCOME TAX)

*Charles A. Reynard**

Twelve of the cases decided by the court at the past term raised issues in the field of taxation. Four of these involved the state's income tax and are treated in a separate section of this symposium.[1] Three others posed constitutional issues and are

4. People's Gas & Fuel Co. v. Louisiana Public Service Commission, 177 La. 722, 149 So. 435 (1932); Shreveport v. Southwestern Gas & Electric Co., 151 La. 864, 92 So. 365 (1922).

5. 233 La. 478, 534, 536, 97 So.2d 56, 77, 78 (1957).

6. LA. CONST. art. VI, § 3 *et seq.*

7. Dissenting Justices rely particularly on the court's statement in Shreveport v. Southwestern Gas & Electric Co., 151 La. 864, 870, 92 So. 365, 367 (1956): "Indeed, this power compulsorily to impose rates being a high attribute of sovereignty, not particularly needed by municipalities for properly functioning, and not usually delegated to them, its delegation could not well be held to have resulted unless from such terms as were positive or absolutely unmistakable."

*Late Professor of Law, Louisiana State University.

1. Collector of Revenue v. King Lumber Industries, 233 La. 965, 99 So.2d

discussed in the section devoted to that subject.[2] The remaining five cases, discussed here, concerned ad valorem, franchise, inheritance, occupational license and sales taxation, and will be discussed in that order.

AD VALOREM TAXATION

In one of the frequently recurring situations in which the validity of tax sales of real property is called in question, the court held in *Mansfield Lumber Company v. Butler*[3] that clerical errors committed in the course of preparing the assessment roll will not invalidate the tax sale. Here the plaintiff brought a petitory action seeking recognition as owner and possession of certain contiguous tracts of land. It was clearly established that Plaintiff's title was derived from a tax sale and the conveyance pursuant to that sale formed a link in an unbroken chain of title back to the United States Government. The defendant contended, however, that as to one portion of the land in question, no assessment had been made for the tax year in question, a claim which was supported by the assessment roll. However, reference to the assessment sheet used in compiling the assessments for the year in question clearly showed that the land was subject to assessment and fully described it, thereby demonstrating that the error had occurred in the course of transcribing the information to the assessment roll. Since the roll showed the total correct acreage, of which the contested portion was but a part, and correctly reflected the total amount of taxes due, the court refused to permit the clerical error to invalidate the tax sale. Similar clerical errors in the assessment roll respecting other parcels resulting in alleged dual assessment were likewise held not to have invalidated the tax sale. Although Article 10, Section 11, of the State Constitution provides that sales of property for taxes may "be set aside on proof of payment of the taxes for which the property was sold," the clerical errors resulting in the dual assessments in this case made it clear that the taxes paid

310 (1958); Olvey v. Collector of Revenue, 233 La. 985, 99 So.2d 317 (1958); Collector of Revenue v. Jefferson Lake Sulphur Co., 234 La. 587, 100 So.2d 876 (1958); and Schlesinger v. Collector of Revenue, 235 La. 47, 102 So.2d 488 (1958).

2. Louisiana-Nevada Transit Co. v. Collector of Revenue, 233 La. 600, 97 So.2d 409 (1957); Ewell v. Bd. of Supvrs. of L.S.U., 234 La. 419, 100 So.2d 221 (1958); and Brown-Forman Distillers Corp. v. Collector of Revenue, 234 La. 651, 101 So.2d 70 (1958).

3. 234 La. 322, 99 So.2d 129 (1958).

by others were actually paid for different parcels which had been erroneously described by the error.

FRANCHISE TAXATION

In the franchise tax case, *Continental Oil Co. v. Collector of Revenue*,[4] the court sustained the right of the Collector to revise the amount of the surplus account of the corporate taxpayer for purposes of assessing the franchise tax. In this case it was held that intangible drilling and development costs incurred by an oil producer are properly to be regarded as assets, rather than expenses in computing the tax. The decision is a reasonable and fairminded construction of the statutory power of the Collector[5] and accords with prior jurisprudence.[6]

INHERITANCE TAXATION

In *Succession of Martin*,[7] arising under the provisions of the state's inheritance tax, it was held that where a testamentary legatee dies prior to the time inheritance taxes on the gifts to him have been determined and without having actually received his inheritance, the gift which would have been his, and which thereby passes to his heirs, is not subject to an inheritance tax as a part of his estate. There is superficially persuasive support for the position of the tax collector in such a case based upon the commonly accepted thesis that the inheritance tax is based upon the right to inherit. In keeping with that concept, which was fully acknowledged by the court in the instant case, the legatee acquires the unquestioned right to the property notwithstanding the fact that his untimely death precludes his actual enjoyment of the property. Furthermore, it is conceded that his title enables him to transmit the property to others by testamentary disposition or intestacy at his death. However, the court has consistently distinguished between seisin of right and seisin in fact, and applying the distinction to the facts of this case, it concluded that the legatee's failure to succeed to actual physical possession and enjoyment of the donation during his lifetime barred the application of the inheritance tax. The case accords with a substantial line of precedent cited by the court.

4. 104 So.2d 633 (La. 1958).
5. LA. R.S. 47:605A (1950).
6. National Manufacture & Stores Corp. v. Collector, 86 So.2d 238 (La. App. 1956).
7. 234 La. 566, 100 So.2d 509 (1958).

OCCUPATIONAL LICENSE TAXATION

In *New Orleans v. Forsyth*[8] the city sought to collect occupational license taxes from an individual engaged in the illegal activity of selling lottery tickets. Conceding that the state had not specifically taxed the occupation in question — a condition precedent to occupational license taxation by municipalities[9] — the city contended that the tax was due under the omnibus clause applying to all occupations not otherwise specifically enumerated. Considerable reliance was placed by both parties upon the case of *Giamalva v. Cooper*[10] where the court in 1950 had sustained an act of the legislature imposing a very substantial tax upon the business of operating slot machines—a similarly illegal activity. The court rejected the city's thesis on two grounds. In the first place it construed the legislature's special slot machine tax to indicate an intent that the occupational license taxes are to be applied only to lawful activities. In the second place, and corroborative of this thesis, the court cited legislative provisions relating to the enforcement of the occupational license tax which authorize judgments "prohibiting the taxpayer from the further pursuit of the business until such time as he has paid the delinquent tax."[11] Although the result is unquestionably sound and very probably conforms to legislative intent, the casual observer must have some sympathy for the city's attempt. Taxes are, after all, the contribution one makes toward the cost of government; and governmental costs are necessarily increased by those engaged in illegal activities. It seems fundamentally unjust that one contributing to increasing cost of government should escape taxation of his illegal enterprise while honest, unoffending, and law-abiding businessmen pay the price for apprehending him.

SALES TAXATION

An interesting point of sales tax law was settled in *Claiborne Sales Co. v. Collector of Revenue*[12] where it was concluded that a company selling ceramic tile to contractors and subcontractors who used the materials in fulfilling construction contracts was making "retail sales" and hence became liable for the tax on all

8. 233 La. 981, 99 So.2d 316 (1957).
9. LA. CONST. art. X, § 8.
10. 217 La. 979, 47 So.2d 790 (1950).
11. LA. R.S. 47:401 (1950).
12. 233 La. 1061, 99 So.2d 345 (1957).

such sales. In cases involving this problem of sales of building materials the courts of last resort in the several states have been divided on the point,[13] and the issue had never been resolved under the language of the present Louisiana act.[14] Since the purchaser of such materials is not the final consumer of the goods, and simply incorporates them into the building or other structure he is constructing, some courts have concluded that the transaction is not a sale at retail, but for resale and as such not within the reach of the sales tax. Other courts, reaching the same conclusion as that in the principal case, reason that the contractor is the last person to make use of the materials in the form of tangible, movable property and conclude that the sale is taxable. The Louisiana act amply supports the conclusion reached here by defining the term "retail sale" to mean "a sale to a consumer or any other person for any purpose other than a resale in the form of tangible personal property."[15]

STATE INCOME TAXATION

*Melvin G. Dakin**

In *Fontenot v. King Lumber Industries*,[1] the collector sought to tax as capital gain on liquidation under La. R.S. 47:159C[2] the excess in value of assets in a subsidiary Louisiana corporation over the initial value of the stock therein when the subsidiary was created by its Mississippi parent. The capital gain on liquidation was urged to be taxable in Louisiana, although received by an out-of-state corporation, on the authority of La. R.S. 47:159H,[3] which provides that the situs of the stock in a cor-

13. See Annot., 163 A.L.R. 276 (1946).

14. In State v. J. Watts Kearny & Sons, 181 La. 554, 160 So. 77 (1935), a case arising under the provisions of the occupational license tax, a similar result was reached on comparable facts.

15. LA. R.S. 47:301(10) (1950).

*Professor of Law, Louisiana State University.

1. 233 La. 965, 99 So.2d 310 (1957).

2. LA. R.S. 47:159C (1950): "Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for stock. The gain or loss to the distributee resulting from such exchange shall be determined under R.S. 47:131 but shall be recognized only to the extent provided in R.S. 47:132 through 47:138. . . ."

3. LA. R.S. 47:159H (1950): "In cases where property located in Louisiana is received by a shareholder in the liquidation of a corporation, the stock cancelled or redeemed in the liquidation shall, for purposes of determining taxable gain under this Chapter, be deemed to have its taxable situs in this state to the extent that the property of the corporation distributed in liquidation is located in Loui-